

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA

Plaintiff,

V.

Civil Action No. _____

WCI STEEL, INC.

Defendant.

COMPLAINT

Plaintiff, the United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the U.S. Environmental Protection Agency ("EPA"), files this complaint and alleges as follows:

PRELIMINARY STATEMENT

1. This is a civil action for injunctive relief and civil penalties pursuant to Section 7003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (“RCRA”), 42 U.S.C. § 6973. This action involves a steel production facility located in Warren, Ohio (the “Facility”). Through this complaint the United States seeks an order requiring that WCI Steel, Inc. (“Reorganized WCI” or “Defendant”), the current owner and operator of the Facility, comply with a unilateral administrative order, as amended, issued by EPA pursuant to RCRA Section 7003(a), 42 U.S.C. § 6973(a), which required that WCI Steel, Inc. (“Debtor WCI”), the owner

and operator, undertake specified measures to address risk to health and the environment at the Facility. On May 1, 2006, the Defendant became the owner and operator of the Facility as a result of a Plan of Reorganization approved by the Bankruptcy Court for the Northern District of Ohio in Debtor WCI's bankruptcy case. As of that date, the Defendant became obligated to comply with EPA's administrative order, as amended, which it has failed to do. In addition, the United States seeks civil penalties, measured from the date Defendant became the owner and operator of the Facility, for Defendant's violations of EPA's administrative order, as amended, pursuant to Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), and such other relief as the Court may deem appropriate.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 1355 and Section 7003 of RCRA, 42 U.S.C. § 6973.

3. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b) because the claims arose in this District and the Facility is located in this District.

DEFENDANT

4. Defendant is a corporation doing business in the State of Ohio and is incorporated under the laws of the State of Delaware.

5. Defendant is a person as defined in Section 1004(15) of RCRA, 42 U.S.C. § 6903(15).

GENERAL ALLEGATIONS

6. The Facility, which is located at 1040 Pine Avenue, S.E., Warren, Ohio, is an integrated flat-rolled steel operation which produces various grades of custom and commodity flat rolled steel products.

7. From 1988 until May 1, 2006, the Facility was owned and operated by Debtor WCI.

8. During the period it owned and operated the Facility, Debtor WCI used various ponds, sludge containment areas, sludge/scum containment areas and a lagoon (hereinafter when referred to collectively "Impoundments") at the Facility to manage oily wastes. These Impoundments have been identified as #5 Pond, #5A Sludge Containment, #5B Sludge Containment, #5C Sludge/Scum Containment, #5D Sludge/Scum Containment, Pad Sludge Containment, #6 Pond, #6A Ponds North and South, 56" Hot Mill Lagoon, 56" Sludge Containment A and 56" Sludge Containment B.

9. In May 2002 agents of the United States Fish and Wildlife Service ("USFWS") discovered oil-covered carcasses of birds (some of which were protected by the Migratory Bird Treaty Act, 16 U.S.C. §§ 703-712) and bats in certain of the Impoundments at the Facility.

10. As a result of USFWS's discovery of the oil-covered carcasses in these impoundments and a local newspaper article on additional oiled birds found at the Facility, an EPA environmental scientist inspected the Facility on June 27, 2002. During this inspection, EPA's environmental scientist observed, among other things, oil or oily sludge in several of the Impoundments and a dead, oiled bird in one of the Impoundments.

11. On September 17, 2002, EPA issued an Administrative Order, under the authority of Section 7003(a) of RCRA, to Debtor WCI relating to the Impoundments at the Facility. This Administrative Order was subsequently amended on January 21, 2003 (hereinafter the Order and its amendment are referred to as "RCRA 7003 Administrative Order" or "Order"). EPA provided notice to the State of Ohio of the issuance of the RCRA 7003 Administrative Order pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

12. In the RCRA 7003 Administrative Order, EPA found that Debtor WCI's past or present handling, storage, treatment, transportation or disposal of solid waste (specifically oily wastes in the Impoundments) may present an imminent and substantial endangerment to health or the environment within the meaning of Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

13. EPA's finding was based, in part, on the USFWS's discovery of oiled bird carcasses in some of the Impoundments (referred to in paragraph 9 above) and the results of EPA's environmental scientist's inspection (referred to in paragraph 10 above). EPA further found that the Facility and surrounding area contain plant and tree species which provide habitat, including cover and food sources for migratory birds and other wildlife and that oil presents acute and chronic hazards to both fish and wildlife.

14. The RCRA 7003 Administrative Order required, among other things, that Debtor WCI remove oily wastes from, and permanently cease managing oily wastes at, the Impoundments on or before February 28, 2003. For some of the Impoundments (#5 Pond, #5A Sludge Containment and 56" Hot Mill Lagoon) Debtor WCI was provided with the option of installing netting meeting requirements identified in the Order.

15. Debtor WCI willfully violated, or failed or refused to comply with, the RCRA 7003 Order within the meaning of Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), by continuing to operate the Facility without: (1) either removing all oily wastes from, and permanently ceasing to manage oily wastes at, #5 Pond and 56" Hot Mill Lagoon (or installing netting meeting requirements identified in the Order at these impoundments); (2) permanently ceasing to manage oily wastes at #5A Sludge Containment (or installing netting meeting the requirements identified in the Order at this impoundment) and #5B Sludge Containment; and, (3) removing all oily wastes from, and permanently ceasing to manage oily wastes at, #5C Sludge/Scum Containment, Pad Sludge Containment and 56" Sludge Containment A by the deadline specified in the Order.

16. On September 16, 2003, Debtor WCI, along with several related entities, filed for protection pursuant to Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 1101 et seq., in the Bankruptcy Court for the Northern District of Ohio ("Bankruptcy Case").

17. On March 9, 2004, the United States, on behalf of EPA, filed a Proof of Claim in the Bankruptcy Case for civil penalties with respect to alleged pre-petition violations by Debtor WCI of the RCRA 7003 Order ("Proof of Claim"). On April 24, 2006, the United States, on behalf of EPA, filed an Application (Proof of Claim) for Payment of Administrative Expense Claim ("Administrative Proof of Claim") in the Bankruptcy Case for civil penalties for alleged post-petition violations of the RCRA 7003 Order by Debtor WCI. Neither the Proof of Claim nor the Administrative Proof of Claim has been adjudicated by the Bankruptcy Court in the Bankruptcy Case and remain pending matters.

18. Effective May 1, 2006, Reorganized WCI emerged from the Bankruptcy Case as the owner and operator of the WCI Facility as a result of the Plan of Reorganization approved by the Bankruptcy Court.

19. Since it became the owner and operator of the Facility on May 1, 2006, Reorganized WCI has willfully violated, or failed or refused to comply with, the RCRA 7003 Administrative Order within the meaning of Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), by continuing to operate the Facility without removing all oily wastes from, and permanently ceasing to manage oily wastes at, #5 Pond, #5A Sludge Containment, and 56" Hot Mill Lagoon (or installing netting meeting requirements identified in the Order at these impoundments) and by failing to remove all oily wastes from, and permanently ceasing to manage oily wastes at, #5B Sludge Containment until after the deadline specified in the RCRA 7003 Administrative Order.

20. EPA has provided notice of the filing of this civil action to the State of Ohio.

21. Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), provides in pertinent part:

[U]pon receipt of evidence that the past or present handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste may present an imminent and substantial endangerment to health or the environment, the Administrator may bring suit . . . against any person (including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility) who has contributed or is contributing to such handling, storage, treatment, transportation, or disposal to restrain such person . . . [or] to order such person to take such other action as may be necessary, or both. . . . The Administrator may also, after notice to the affected State, take other action under this section including, but not limited to, issuing such orders as may be necessary to protect public health and the environment.

42 U.S.C. § 6973(a).

23. Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701, and 40

C.F.R. § 19.4, provide for civil penalties of up to \$6,500 per day for each day of violation of, or failure to comply with, an order issued by EPA under Section 7003(a) of RCRA, 42 U.S.C. § 6973(a) occurring after March 15, 2004.

CLAIM FOR RELIEF

(RCRA Section 7003(a), 42 U.S.C. § 6973(a))

24. Paragraphs 1 through 23 of this Complaint are incorporated herein by reference.
25. Defendant has contributed or is contributing to the past or present handling, storage, treatment, transportation, or disposal of solid waste at the Site.
26. EPA has found that the past or present handling, storage, treatment, transportation, or disposal of solid waste (specifically oily wastes in the Impoundments) at the Facility may present an imminent and substantial endangerment to health or the environment.
27. On May 1, 2006, Defendant became the owner and operator of the Facility as a result of a Plan of Reorganization approved by the Bankruptcy Court in Debtor WCI's Bankruptcy Case and became obligated to comply with EPA's RCRA 7003 Administrative Order.
28. Since it became the owner and operator of the Facility on May 1, 2006, Defendant has willfully violated, or failed or refused to comply with, the RCRA 7003 Administrative Order.
29. Pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, the United States is entitled to an injunction ordering the Defendant to comply with the RCRA 7003 Administrative Order.
30. Pursuant to Section 7003(b) of RCRA, 42 U.S.C. § 6973(b), the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461, as amended by 31 U.S.C. § 3701,

and 40 C.F.R. § 19.4, Defendant is liable for civil penalties of up to \$6,500 per day for each day of Defendant's willful violation of, or failure or refusal to comply with, the RCRA 7003 Administrative Order since May 1, 2006.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that this Court:

1. Order Defendant to comply fully with the RCRA 7003 Order.
2. Enter judgment in favor of the United States against Defendant for a civil penalty in the amount of up to \$6,500 per day for each day of violation of the RCRA 7003 Administrative Order by Defendant since May 1, 2006; and
3. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,

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